

# **PUBLIC SERVICE COMMISSION OF WISCONSIN**

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## **Memorandum**

September 13, 2021

### **FOR COMMISSION AGENDA**

TO: The Commission

FROM: Martin R. Day, Administrator  
Tara N. Bachman, Deputy Administrator  
Randel Pilo, Bureau Director, Electrical Analysis and Engineering  
Jeff Kitsebel, Engineer  
Division of Energy Regulation and Analysis

RE: Application for Intervenor Compensation filed by Village of Cambridge to Participate in Docket 9811-CE-100 1-IC-533

Suggested Minute: The Commission (approved/modified and approved/did not approve) the request of the Village of Cambridge for \$60,615 in intervenor compensation for its participation in docket 9811-CE-100, the application of Koshkonong Solar Energy Center LLC to Construct a Solar Electric Generation Facility in the Towns of Christiana and Deerfield, Dane County, Wisconsin

### **Introduction**

On April 15, 2021, Koshkonong Solar Energy Center LLC (Koshkonong Solar) filed an application with the Public Service Commission of Wisconsin (Commission) for authority to construct a solar electric generation facility with a battery energy storage system (BESS) in docket 9811-CE-100.

The Commission is currently reviewing the application in docket 9811-CE-100 and issued a Notice of Proceeding on June 24, 2021. ([PSC REF#: 414242](#).) On June 9, 2021, the Village of Cambridge (applicant) filed a request to intervene. ([PSC REF#: 413374](#).) On July 16, 2021, the Administrative Law Judge (ALJ) granted the applicant's request to intervene. ([PSC REF#: 416196](#).) On August 17, 2021, the ALJ issued a Prehearing Conference Memorandum. ([PSC REF#: 418913](#).)

As stated in the Commission's Notice of Proceeding, requests for intervenor compensation (IC) are to be made as soon as practicable. On August 18, 2021, the applicant filed a request for IC totaling \$75,000, which included approximately \$40,000<sup>1</sup> for legal services and an estimated \$35,000 for an expert witness to be hired in the future. ([PSC REF#: 419055.](#)) On September 1, 2021, the applicant filed an expert witness proposal request totaling \$19,925, which is \$15,075 less than the estimate included in the original application. ([PSC REF#: 419867.](#)) The revised IC request amount is \$60,615.<sup>2</sup> The applicant indicated that the proposed Koshkonong Solar proposal emerged without advanced notice in the applicant's budget process. All time and effort by the applicant is entirely unbudgeted. Additionally, the applicant states it is limited by levy caps and does not have the flexibility to add this issue to its budget. To date, the applicant has reallocated \$10,000 to this issue from other areas of the budget. Most of the reallocated funds are already spent. The applicant believes that its participation in docket 9811-CE-100 is necessary in order to set out the potential impacts of the proposed project on its finances, services, quality of life, and future growth potential, as well as the unique concerns and challenges to its fire department posed by the proposed BESS, and that it is likely its positions and information will differ from those presented by Commission staff.

### **Criteria for Evaluating Eligibility for Compensation**

Wisconsin Stat. § 196.31(1) provides that the Commission shall provide IC to any non-utility participant in a proceeding if the Commission finds that either: (a) "the participation is necessary to provide for the record an adequate presentation of a significant position in which

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<sup>1</sup> As detailed below, the cost of legal services included in the application totaled \$40,690.

<sup>2</sup> In its expert witness proposal, the applicant indicates that the revised IC request is \$65,515. However, this appears to be a mathematical error. The revised request amount is \$60,615, which consists of \$40,690 for legal services and \$19,925 for an expert witness.

the participant has a substantial interest, and that an adequate presentation would not occur without a grant of compensation”; or (b) the “participation has provided a significant contribution to the record and has caused a significant financial hardship to the participant.”

Pursuant to Wis. Admin. Code § PSC 3.02, to be eligible to receive IC a person must be all of the following:

- (a) A customer of the utility which is the subject of the proceeding; or someone who may be materially affected by the outcome of the proceeding.
- (b) Someone for whom full intervention in the proceeding would cause significant financial hardship without compensation from the Commission.
- (c) Someone who represents an interest material to the proceeding, which but for award of compensation would not be adequately represented, taking into consideration the information that will be presented by Commission staff and other persons who have indicated they will be presenting information in the proceeding.
- (d) Someone whose interest must be represented for a fair determination in the proceeding, taking into consideration the information that will be presented by Commission staff and other persons who have indicated they will be presenting information in the proceeding.
- (e) Someone who has been granted full party status and who will participate in the proceeding as a full party.

Under Wis. Admin. Code § PSC 3.04(2), compensable expenses include:

- (a) Attorney fees.
- (b) Expert witness fees.
- (c) Cost of clerical services.
- (d) Preparation of studies, displays, and exhibits.
- (e) Travel and subsistence costs.
- (f) Other costs associated with the intervention and actually incurred.

## **Application**

The applicant is a local unit of government. Accordingly, the applicant contends that its participation is necessary to adequately represent the interests of local taxpayers, ratepayers, and property owners who will be impacted by the project. The applicant also states that it will be the only party that will have the understanding and knowledge necessary to set out the potential

long-term impacts of the project on its finances, services, quality of life, future growth potential, and the unique concerns and challenges to its fire department posed by the BESS.

The applicant believes these issues require examination in docket 9811-CE-100 and that without IC funding it will be significantly hampered in its ability to provide informed testimony and recommendations to the Commission. The applicant is seeking IC in order to hire attorneys Matt Frank and Matt Flemming as legal counsel to assist with the complexities of the Commission's process, and to assist in representing the applicant's case given the legal standards that the Commission will apply in consideration of the proposed project. It is also proposing to hire MDRoffers Consulting to analyze the effects that the proposal would have on the Village of Cambridge's land development and community expansion prospects, economic and tourism potential, entryway experience and aesthetics, and related matters.

Therefore, the applicant is requesting IC totaling \$60,615 to allow it to retain the outside consultants with the necessary expertise to provide a full and complete analysis of the issues in docket 9811-CE-100. The applicant indicated that the IC is necessary since essentially all of its existing funds have already been expended.

### **Applicant's Work Plan**

The applicant proposes to use attorneys Matt Frank and Matt Flemming to act as legal counsel for their work in this docket. The discounted rate charged to the applicant is \$300 per hour.

<b>Murphy Desmond S.C.<sup>3</sup></b>		
<b>Task Description</b>	<b>Hours</b>	<b>Legal (\$300/Hour)</b>
Prehearing	60	\$18,000
Hearing	15	\$4,500
Post-hearing	50	\$15,000
Copying		\$100
Mileage (176 miles at \$.51 per mile)		\$90
Legal costs already incurred	10	\$3,000
<b>Total Legal Expense</b>		<b>\$40,690</b>

The applicant further proposes to use the services of MDROffers Consulting at the rate of \$175 per hour for review and analysis and \$225 to appear as a witness at hearing.

<b>MDROffers Consulting<sup>4</sup></b>		
<b>Task Description</b>	<b>Hours</b>	<b>Consultant (\$175/Hour)</b>
Review and analysis	101	\$17,675
Hearing	10	\$2,250
<b>Total Consulting Expense</b>		<b>\$19,925</b>

### **Koshkonong Solar Opposition to the Request**

On September 2, 2021, Koshkonong Solar filed a response in opposition to the Village of Cambridge's Application for IC. ([PSC REF#: 419989.](#)) For reasons set out in the filing, Koshkonong Solar believes the Village of Cambridge's application fails to satisfy the requirements for an award of IC and should be denied. On September 10, 2021, the applicant filed a response to this opposition, challenging the procedural and substantive merits of Koshkonong Solar's filing. ([PSC REF#: 420538.](#))

### **Commission Staff Analysis**

Koshkonong Solar has requested Commission approval to construct a solar electric generation facility with a BESS in docket 9811-CE-100. Koshkonong Solar supplied information and analyses substantially similar to those in other solar electric generation facility

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<sup>3</sup> The applicant's detailed work plan is contained on pages 15 and 16 of its application. ([PSC REF#: 419055.](#))

<sup>4</sup> The applicant's detailed work plan is contained on page 4 of its expert witness proposal. ([PSC REF#: 419867.](#))

proceedings either currently or previously before the Commission. However, the solar electric generating facility proposed in docket 9811-CE-100 is the largest (in MW<sub>AC</sub>) proposed to date in Wisconsin.

As discussed above, the applicant is eligible to receive IC if the applicant's "participation is necessary to provide for the record an adequate presentation of a significant position in which the participant has a substantial interest, and that an adequate presentation would not occur without a grant of compensation". Wis. Stat. § 196.31(1)(a). The applicant has identified its interests and has been granted full party status in docket 9811-CE-100. *See* Wis. Admin. Code § PSC 3.02(a), (e).

The legal counsel that the applicant proposes to employ have provided similar analyses in other proceedings either before the Commission or before other regulatory bodies. The analysis proposed by the expert witness is similar to that provided by other expert witnesses in other proceedings either before the Commission or before other regulatory bodies. The cost per hour and time allotted the applicant's legal and expert witness work plans appear consistent with prior requests.

The applicant contends that it would suffer financial hardship absent an IC award. *See* Wis. Admin. Code § PSC 3.02(b). Koshkonong Solar disputes this contention. In response, the applicant notes that it is small municipality with a limited budget (constrained by state levy limits) and staff that lacks the time or expertise absent an award of IC.

The remaining required factors, (c) and (d), relate to the materiality of the applicant's interests, and whether representation of the applicant's interests is necessary for the fair resolution of the proceeding. Wis. Admin. Code § PSC 3.02 (c)-(d). These factors should be

applied “taking into consideration the information that will be presented by Commission staff and other persons who have indicated they will be presenting information in the proceeding.” *Id.*

The applicant states that its participation is necessary because no other party has the understanding and knowledge necessary to set out the potential long-term impacts of the project on its finances, services, and quality of life. The applicant further states that it can provide an additional perspective regarding safety and environmental issues that may arise from the proposed BESS as any fire caused by or involving the BESS would occur within the jurisdiction of the applicant’s fire department. The applicant believes that such a fire would present unique concerns and challenges to the fire department and community.

Commission staff, as part of its Environmental Review process, will analyze potential environmental and socioeconomic impacts. Commission staff’s review will include a review of the proposed BESS. While staff may review similar issues, the applicant may provide a unique perspective.

### **Status of IC Fund**

The state fiscal year (SFY) 2022 expenditure authority for IC is \$542,500.<sup>5</sup> The Commission has yet to approve any IC requests in SFY 2022. The applicant has requested \$60,615<sup>6</sup> to participate in docket 9811-CE-100. If the Commission were to fund this IC request, \$481,885 of expenditure authority would remain available to fund additional IC requests through June 30, 2022. There are two other pending IC requests totaling \$88,327.50.<sup>7</sup> If the Commission

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<sup>5</sup> This is a reduction of \$300,000 from the SFY 2021 expenditure authority to account for the elimination of the IC grant funding mechanism, which previously provided \$300,000 in annual funding to Citizens Utility Board of Wisconsin (CUB). The IC grant has been replaced by the consumer advocate funding model which is funded directly by utility payments to CUB and is not funded by the Commission’s IC appropriation.

<sup>6</sup> See fn. 2.

<sup>7</sup> The other pending requests are in dockets 1-IC-531 and 1-IC-532.

were to fully fund all three IC requests, \$393,557.50 of expenditure authority would remain available to fund additional IC requests through June 30, 2022.

<b>Fiscal Year 2022</b>					
<b>INTERVENOR COMPENSATION REPORT</b>					
Intervenor Docket #	PSC Docket #	Intervenor	Date Requested	Amount Requested	Amount Approved
1-IC-531. <sup>8</sup>	3270-UR-124	Citizens Utility Board	7/22/2021	\$81,100.00	<i>Pending</i>
1-IC-532	9811-CE-100	John Barnes	7/30/2021	\$7,227.50	<i>Pending</i>
<b>Total</b>				<b>\$141,715.00</b>	
<b>FY 2022 Budget</b>					\$542,500.00
<b>Approved Requests</b>					\$0
<b>1-IC-533 Request</b>					\$60,615.00
<b>Remaining Funding if 1-IC-532 Approved</b>					\$481,885.00
<b>Pending Requests (see above)</b>					\$88,327.50
<b>Remaining Funding if All Pending Requests Approved</b>					<b>\$393,557.50</b>

### Commission Alternatives

**Alternative One:** Fully fund the applicant's IC request in the amount of \$60,615.

**Alternative Two:** Partially fund the applicant's IC request at a reduced level as the Commission deems appropriate.

**Alternative Three:** Deny the request in its entirety because the applicant's request fails to satisfy one or more of the eligibility criteria set forth in Wis. Stat. § 196.31(1) or Wis. Admin. Code § PSC 3.02.

MRD:JAK:jlt:DL: 01829980

#### Key Background Documents

[Village of Cambridge Request to intervene - PSC REF#: 413374](#)

[Notice of Proceeding Signed & Served 06/24/2021 - PSC REF#: 414242](#)

[Order on Requests to Intervene Served 07/16/2021 - PSC REF#: 416196](#)

[Order Signed & Served 07/22/2021 - PSC REF#: 416549](#)

[Prehearing Conference Memorandum Served 08/17/2021 - PSC REF#: 418913](#)

[Village of Cambridge Intervenor Compensation Application in docket #9811-CE-100 - PSC REF#: 419055](#)

[Submission of Expert Witness proposal - PSC REF#: 419867](#)

[Response Brief In Opposition to the Village of Cambridge Application For Intervenor Compensation - PSC REF#: 419989](#)

[Response to Opposition to Intervenor Compensation - PSC REF#: 420538](#)

<sup>8</sup> At the September 2, 2021 Commission meeting, docket 1-IC-531 was laid over.